



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 13, 2002

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2002-7139

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173707.

The Texas Department of Human Services (the "TDHS") received a request for three categories of information relating to the termination of the requestor's employment with the TDHS. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note initially that some of the submitted information is subject to section 552.022 of the Government Code, which makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part that:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108...." Gov't Code § 552.022(a)(1). The submitted information contains completed investigations subject to section 552.022(a)(1). Therefore, as prescribed by section 552.022, this information must be released to the requestor unless it is excepted from release under section 552.108 or is confidential under other law. You argue that the submitted information is excepted from

release under sections 552.101 and 552.108. Accordingly, we will consider whether the completed investigations are excepted from release together with the remaining submitted information.

Section 552.108 of the Government Code, the "law enforcement exception," excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if... release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform this office that the requested information pertains to an investigation that has been referred to the Office of the District Attorney for the 156th Judicial District of Texas (the "DA") for prosecution. You further inform us that the DA states that this prosecution is current or pending, and that the DA has asked the TDHS not to release the requested information as release of the requested information would hinder the prosecution of this case. You have also provided a copy of a letter from the DA to this effect. Based on your representations and the DA's letter, we find that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (stating that law enforcement exception may be invoked by any proper custodian of information relating to an incident allegedly involving criminal conduct that remains under active investigation or prosecution). Accordingly, you may withhold the submitted information in its entirety pursuant to section 552.108(a)(1). As section 552.108 is dispositive, we need not consider your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

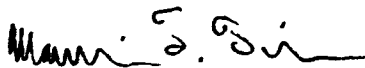
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher".

Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 173707

Enc: Submitted documents

c: Ms. Elia Martin
P.O. Box 814
Beeville, Texas 78102
(w/o enclosures)